91-1402

Supreme Court, U.S.
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NO: A-531

In the Supreme Court of the United States

OCTOBER TERM, 1991

EDITH HOROWITZ BROIDA

V.

SAMUEL S. SMITH, ET AL

PETITION FOR WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEALS OF FLORIDA

EDITH HOROWITZ BROIDA
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QUESTION I

WHETHER THE STATE COURT CAN DEPRIVE THIS FEMALE PETITIONER OF HER FOURTEENTH AMENDMENT CONSTITUTIONAL PROPERTY RIGHTS PURSUANT TO A CONTRACT EXECUTED EIGHT YEARS EARLIER AND TOTALLY PERFORMED BY FIRST PARTY PETITIONER PRIOR TO THE STATE COURT JUDGE REFUSING TO FOLLOW STATE STATUTE WHICH MANDATES ACCEPTANCE OF THAT HEIRSHIP SETTLEMENT CONTRACT ALSO IRREVOCABLE BY STATUTE AS A DISCLAIMER OF ALL INTEREST BY SECOND PARTIES, AND WHERE NO CHALLENGE HAD BEEN BROUGHT BY THE PARTIES, BUT THE COURT CONTINUOUSLY REFUSING TO ACCEPT CONTRACT OR HOLD DUE PROCESS TRIAL REQUESTED BY PETITIONER, AND PETITIONER PURSUANT TO SAID CONTRACT TOOK RESPONSIBILITY AS ATTORNEY, LITIGATION ATTORNEY, PERSONAL REPRESENTATIVE, PROPERTY MANAGER, TAX PREPARER, SUCCESSFULLY REMOVING INVALID INTERESTS, AND CREATING A $400,000.00 CORPUS IN A COMPANION CASE FOR AN ESTATE WITHOUT FUNDS, THE COURT CARRYING OUT ITS PERSONAL OBJECTIVE TO DEPRIVE PETITIONER OF COMPENSATION FOR THE

ESTATE WORK AND HER LAWFUL AND CONTRACTUAL ONE-HALF BENEFICIARY RIGHTS.

Fla Stat. 733.815; Fla. Stat. 732.801(4)(b)

QUESTION 2

WHETHER THE STATE COURTS CAN DEPRIVE PETIIONER OF HER RIGHT TO FILE SUITS TO ESTABHER PROPERTY RIGHTS OR SEQUESTER THOSE SUITS TO PROHIBIT THEIR PURSUIT IN ORDER TO OBTAIN ADVANTAGE FOR ITSELF AND OTHERS, AND WHETHER THAT COURT CAN PUNISH PETITIONER FOR PURSUING APPEALS AND SUITS TO PROTECT HER DUE PROCESS AND PROPERTY RIGHTS GUARNATEED BY FEDERAL AND STATE CONSTITUTION AND STATE STATUTES.

TABLE OF CONTENTS

i. Question Presented

iii. Table of Contents

iii. Citation of Authorities

v List of Parties

vi Opinions Below

vii Statutory Provisions

1. JURISDICTION

8. Statement of the Case

23. Reasons For GRanting Writ

27 Conclusion

28. Certificate of SErvice

CITATION OF AUTHORITIES

1. American Surety Co. v. Baldwin 287 US 156, 53 SCt 98, 77 LED 231 — 24
2. Blatt v. Green, 456 So2d 949, 1984 — 8
3. Blacker v. Thatcher, 145 F2d 255 — 25
4. Bullard v. Sharp, 407 So2d 1023, 1981 — 25
5. Carter v. Greenbow, 114 US 317, 5SCT 928 — 24
6. Coppage v. State of Kansas, 236 US 1 — 25
7. Dodge v. Woolsey, 18 How 33, 15 LED 401 — 27
8. Fla Star v. BKF, 484 US 984 — 1.
9. Garner v. Louisiana, 368 US 157 — 7
10. Gay v. Heller — 8
11. Hendrick v. Redfern, Fl, 88 So2d 620 — 10
12. In re Estate Lynagh, — 17
13. Irvin v. Dowd, 359 US 394, 79 SCT 825 — 7
14. In re Pellicer's Estate, 118 So2d 59 — 25
15. John v. Paullin, 231 US 583 — 7
16. Lehr v. Robertson, 77 LEd2d 614 — 27
17. Robb v. Connelly, 111 US 62 — 7
18. State v. Ives. 167 So 394, Fla. — 25

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CITATION OF AUTHORITIES (cont'd)

19.	Stonev. Powell,428 US 465	7
20	Thompson v. City of Louisville 362 US 199, 203. 1960	6
21	Weiss v. Storm	25
22.	Wood v. Georgia, 450 US 261	6

US. Const.

Fifth Amend	2
Fourteenth Amend.	2
Thirteenth Amend.	3
Fed Stat. Sec. 1983	2
Florida Const.	2

Fla. Stat.

733. 815	vii
732.801 (4) (b)	viii
733.301	vii

Text
Supreme Court Practice, 6th ED, Stern

LIST OF PARTIES IN THE COURT BELOW

1. ESTATE OF MAURICE HOROWITZ (Father)
2. EDITH HOROWITZ BROIDA (Daughter)
3. ALVIN EDWARD HOROWITZ (Son)
4. STEPHEN RONALD HOROWITZ
5. PAULA HOROWITZ ROTH
6. KAREN HOROWITZ KAPLAN
7. BETSY HOROWITZ NIEVES
8. STACIE BROIDA MERRETT
9. THOMAS BLAINE MERRETT

* A. ATTORNEYS, NOT PARTIES, AWARDED FEES

1) SAMUEL S. SMITH
2) GENE S. ROSEN
3) MILTON KELNER
4) MALLORY HORTON, Attorney witness for personal representative Smith. Guardian-ad-litem Kelner, and Rosen, representing two of the parties.

* The fee awards are contested.

OPINIONS BELOW

1. The decision of the Florida Supreme Court declining to accept jurisdiction, dismissing the appeal and denying the petition for review. October 28, 1991 Ap p 1
2. The decision of the Third District Court of Appeals of Florida, March 12, 1991, Ap p 3
3. Final Judgment of Probate Trial Court, December 8, 1989. Ap, p 5

FLORIDA PROBATE STATUTES APPLICABLE

733.301 Preference in Appointment of Personal Representative

In the granting of letters, the following preferences shall be observed.:

(1) In testate estates:

(a) The personal representative, or his successor, nominated by the Will or pursuant to a power conferred in the will.

(b) The person selected by a majority in interest of the persons entitled to the estate.

(c) A devisee under the will. If more than one devisee applies, the court may exercise its discretion in selecting the one best qualified.

733. 815 Private Agreements Among Distributees

Subject to the rights of creditors and taxing authorities, competent interested persons may agree among themselves to alter the interests, shares, or amounts to which

they are entitled under the will or under the laws of intestacy in a written contract executed by all who are affected. The personal representative shall abide by the terms of the agreement, subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibili - ties of his office for the benefit of any beneficiaries of the decedent who are not parties to the agreement.

732.801 Disclaimer of interests in property passing by will or intestate succession or under certain powers of appointment

(2) Scope of right to disclaim-

(a) A beneficiary may disclaim his succession to any interest in property that, unless disclaimed, would pass to the beneficiary

1. By intestate succession or devise.

(4) Form, filing, recording, and service of disclaimer instruments-

(b) A disclaimer shall be effective and irrevocable when the instrument is

recorded by the clerk where the estate of the decedent is or has been administered. (5) A disclaimer shall be filed ...not later than six months after the event that would cause him to become finally ascertained and his interest to become indefeasibly fixed both in quality and quantity.

JURISDICTION

1. The last decision below was the denial of the Supreme Court of Florida to accept jurisdiction of an appeal and discretionary review on October 28, 1991.(Attached 1.)

2. Since that court did not render an opinion although they had the jurisdiction to do so (The Florida Star v. BKF,holding the Supreme Court exercises jurisdiction to determine whether it will exercise its discretionary jurisdiction to review*) the petition is directed to the appeal court's opinion, being the Third District Court of Appeals of Florida. (Attached 2.)

3. This petition for certiorari conforms to Sup. Ct. Rule 20 .2.

4. Civil jurisdiction is invoked under 28 USC 1257(3)and is invoked pursuant to Rule 17 (b) and (c). The judgment of the trial court and opinion of the appeal court plus the refusal of the Supreme Court of Florida to accept review are deprivations of peti-

*484 US 984, 108 SCT 499, 98 LED2d 498,1987

tioner's Federal Constitutional rights as guaranteed by the Fifth Amendment and the Fourteenth Amendment[fn1], Title 42, USC,Sec, 1983,[fn2], the Thirteenth Amendment[fn3],the Florida Constitution,Art 1, SEC 2,9,10 [fn4], Probate statutes and case law of the State of Florida in conflict with the decision of the Third District Court of Appeals of Florida and the judgment of the Florida trial probate judge.

5. The federal issue was raised in the court below (Notice of Appeal to Supreme Court,p

ISSUES PROVIDING FOR JURISDICTION

A. Impairment of contractual rights without due process of law,

B. Denial of access to the courts to protect valid contractual and legal rights to property.

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fn1: Amend. V, no person "shall be deprived of life, liberty or property without due process of law"; Amend XIV,nor shall any State deprive any person of life, liberty, or property without due process of law.
fn 2: Every person, who under color of any statute,ordinance, regulation, custom or usage, of any State or territory or the District of Columbia subjects or

C. Deprivation of property and order of incarceration for protection of contractual and property rights in valid court proceedings.

D. Judicial sequestration of valid suits filed to protect property rights.

E. Denial of compensation for eight years of professional work performed as attorney and other professional without grounds, such work based upon valid contract not set aside in any valid due process court proceeding, contract fully performed by petitioner.

F. Judicial sexual discrimination against a female professional deliberate and resulting from conspiracy and jealously of her abilities and successful performance.

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fn 2 cont'd:subjects or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.: fn 3:Amend XIII: "Neither slavery or involuntary servitude , except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

DECISIONS OF THE STATE COURTS IN THIS CASE AFFECT CITIZENS OF ALL THE UNITED STATES

A. The State of Florida is and has been a state to which hundreds of thousands of citizens from other states change their residence, as well as citizens from other countries.

B. They die residents of the State and their estates are probated in the courts of Florida in accordance with Florida probate statutes and case law.

C. Continuously seminars are held to advise residents and would-be citizens of the State of the benefits of Florida law.

C. If they consult an attorney they would be assured that Florida's probate statutes are mandatory and provide certain protections.

D. It is unlikely they would be told of the instant case, nor would the attorneys advising know the circumstances of the case to understand the arbitrary and discriminatory abrogation of mandatory statutes.

E. It is a dangerous precedent to allow the lower court decision to stand and affect the rights of present and future new residents of the State of Florida who will unwittingly trust the statutes which have been passed to protect their rights when in fact the judiciary will have been permitted to abrogate those statutes and the Federal and state constitutions.

F. The decisions below affect the rights of all citizens of this Nation.

G. The proceedings in the probate court below and the decision of the Third District Court of Appeals, the refusal to accept review by the Supreme Court of Florida are as much a threat to anyone having an interest in an estate of a deceased in Florida as the actions of the Third Reich in Germany where the courts appropriated property of Jews.

(All attorneys named, the parties, and the probate judge are Jews having no regard for law or constitutional rights.)

H. Judicial denial of compensation for eight years of professional services results in abrogation of Amend XIII's prohibition against peonage. fn 3

PRIOR ACCEPTANCES OF JURISDICTION BY THIS COURT IN INSTANCES OF GROSS INJUSTICES AND FUNDAMENTAL UNFAIRNESS

A. In Wood v. Georgia, 450 US 261, 265, 1981, this Court reviewed a State court decision in which a conflict of interest in violation of due process had not been challenged below or in the petition for certiorari to this Court, this Court found a remand was required in the "interests of justice" fn 6

B. Where due process questions presented were substantial certiorari was granted to review a $20.00 fine. Thompson v. City of Louisville ", 362 US 199, 203, 1960 This Court found a refusal to follow established law.

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fn 4: Fla. Const. Art 1, Sec 2, 9, 10, Guarantee right to contract, to protect property, protect

C. Garner v. Louisiana, 368 US 157, 163, 1961, the Court reviewed where the judicial decisions below were totally devoid of evidentiary support and rendered unconscionable under due process clause of 14th Amend.

FEDERAL ISSUES ALWAYS PRESENT IN STATE COURT PROCEEDINGS AND JUDICIAL DECISIONS AND RULINGS WHETHER OR NOT RAISED

A. "State courts like federal courts have a constitutional obligation to safeguard personal liberties and to uphold federal law." Stone v. Powell, 428 US 465.

B. "The rules of practice to be applied in state courts are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law." John v. Paullin, 231 US 583, 34 SCT 178

C. "State court judges are bound by their oath to support the Constitution and the laws made in pursuance thereof, and the duty rests upon them equally with the courts of the union to guard, enforce and protect every right granted or secured thereby.
Robb v. Connelly, 111 US 62, 28 LED 542

Irvin v. Dowd, 359 US 394, 79 SCT 825

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fn 4 cont'd: mployment contracts, fn 6: Supreme Court Practice, 6th Ed. Stern, Gressman, Shapiro, 1986, p 365.

STATEMENT OF THE CASE

1. The rights of parties to enter into contracts are protected by the Fourteenth and Fifth Amendments to the Constitution. If any court refuses to uphold that right it is an abrogation of those Constitutional protections. Such right is basic and unnecessary to raise as a federal constitutional right in the lower or appeal courts. The same right is provided by the Fla. Const.

2. Conspiracy by judges with parties and lawyers to abrogate rights is exactly why such are provided by law, the lawmakers knowing from experience that such fraud will be perpetrated,even by judges,without providing protection, and so too knew the framers of the Constitution.

3. In Gay v. Heller, Fla. an attempt was made to sue lawyers and the judge who sold the property of an incompetent and divided the proceeds amongst them. In Blatt v. Green,Fla., a panel of the same

Third District Court of Appeals approved a suit against both the lay personal representatives and their attorney for distributing an estate without regard to a prior settlement agreement with an interested party. 456 So2d 949, 1984

4. In the case herein from its very inception personal prejudice of judges was involved. The lawyer who prepared a Will for a senile man of 83 while representing him, said testator's wife of 60 years upon whose advice he relied having died six months before, was contested as to that Will before a judge who knew him as a constant practitioner in probate court and was disturbed to review a case with allegations of undue influence against him. Said attorney had created a different estate making himself a beneficiary, his wife, and his daughter each with an equal share, to petitioner and her brother whom he knew to be sole equal beneficiaries of both spouse's mutual and

reciprocal wills of 1952, one share each.

5. The new will of January 6, 1978 also named that lawyer as personal representative giving him control of the estate. His division of the estate into 13 equal shares with only one each to the daughter and son was objected to by all family members and contested in court to declare the will invalid and disposition to be made according to the mutual and reciprocal will. Ap 4

6. The State of Florida urges will settlement agreements, particularly within families to preserve the family from litigation with each other. Hendrick v. Redfern, Fls. 88 So2d 620, 1956, 18 Fla Jur2d Sec 337,338

7. All the family members entered into agreement to contest that will. Son Alvin and his four adult issue entered into witnessed agreement declaring the estate the property of petitioner and her brother, later recorded according to Stat.732,801 (4) (b) becoming irrevocable. A23,26

8. The will contest continued for two years with a final settlement removing the attorney's interests, the settlement of $21,000. and all court costs paid by petitioner and her brother, the attorney was petitioner.

9. In fact the estate had no funds except a claim to a home in eminent domain condemnation proceedings for five years prior to deaths of decedents with petitioner as their attorney to first, resist eviction of the owners, or to receive full fair value which the condemnor refused to pay. Pursuant to entry into the agreement petitioner agreed to continue that suit finally obtaining an appraisal of between $648,000.00 and $1.000,000. 00.

10. Petitioner had in litigation removed five interests under the invalid will. In the eminent domain cause she had obtained dismissal of the bad faith suit, which was reversed on appeal. '77.

11. After removal of the will preparing attorney, the eminent domain cause was tried and the jury verdict was an inadequate $300,000., which petitioner appealed and reversed due to many court errors. '81, '82.

12. Both the will contest and eminent domain cases were extremely vexatious taking thousands of hours of preparation.

13. The first will contest judge retired before the case was concluded which is why a settlement was made on request of the defendant.

14. Before the eminent domain case could have new trial, with the condemnor fearful of possibly paying $1,000,000.00,an interested party who also had an oral agreement with petitioner and her brother that she would receive an interest, if ever there was one, retained an attorney for a settlement on the eminent domain $300,000.00. Instead, he began litigation in the estate before newly appoint-

ed probate judge who did not think interested parties could enter into an agreement and who had previously sat on the criminal bench for 25 years, and who was having ex parte relationships with one of the interested parties new husband. (That judge died in 1986) The judge was disqualified and the next judge immediately appointed a perennial appointee of his as personal representative (executor) removing petitioner and her brother in abrogation of Fla. Stat. 732.301 making it mandatory for the majority in interest to choose the executor. P.

15. From then on petitioner and her brother tried to regain control of the estate into which they had invested $70,000.00 as a business venture with each other.

16. The probate judges were overjoyed to have another will contest. Petitioner on behalf of herself and brother appealed the appointment of executor Samuel S. Smith.

17. They discovered the reason he was appointed into the case. Mr. Smith, once a President of the Florida Bar, active in the American Bar, has a relationship with all judges although he practices only in the probate division. He followed the directions of the judge appointing him who when disqualified stated he did not like petitioner.

18. Petitioner took the appeal to the Supreme Court of Florida with the same result. In this case, where Ssmith was involved judges abrogated law.

19. Petitioner was forced to file a suit in general jurisdiction to establish the contract between decedent spouses which resulted in mutual wills which is recognized in Florida.

20. A new judge, now on the case, selected personally by the former judge, also followed directions to remove petitioner

20. a.The estate was a family matter and all issues resolved in March 1980 with only the eminent domain cause to be concluded. That first value trial in July 1981 was ready for retrial in 1983, but it was 1983 when the estate was taken control of by the probate judge.

20.b.After the new value trial all that would be necessary would be to distribute the estate. The abrogation of statutes by the probate judges caused multiple appeals to be taken and cases to be filed.

20.c.In 1985 the present probate judge instructed Smith to transfer the equity case to prove the spousal contract to him. It has remained there with his refusal to let it go forward, and it cannot be heard in probate,that court not having jurisdiction in equity. The judge sequestered the suit to prove a valid will that all parties had agreed was valid so that he could uphold the will all agreed was invalid.

21. Petitioner then removed the case to federal court and Smith intervened there as well,in all the appeals to remove that judge,and appeals of his biased and invalid rulings. Federal court has jurisdiction.

22. The women's Bar of Florida obtained funds for a study of prejudice of judges against women lawyers and litigants. The finding was of great prejudice from testimony of hundreds of women lawyers, and they included these probate judges in their complaints. They were never appointed they said.

23. The intervention of Smith caused petitioner and her brother to settle with the condemnor for what they would agree to, $400,000.00 to the estate, $75,000.00 to petitioner, $25,000.00 to pay the costs to the appraiser, court reporters, the architect and other such costs advanced by the two heirs.

24. None of the other interested parties

invested time or money. They lived their own lives.

25. Smith's intervention cost a minimum loss of the lower appraisal figure of ¢648,000.00, a minimum loss of $200,000. He deliberately interfered because his brother was close to the condemnor City's commissioners and they did not want to pay full value. Of course he had a conflict of interest by being in the estate.

26. Attempt was made to remove Smith, due to his malfeasance, and he testified he rarely has acted as personal representative. His legal actions are in litigation.

27. A personal reprsentative is prohibited from interfering between heirs, In re Estate of Lynagh, he is a fiduciary protecting the assets for all interested parties, by law.

28. The settlement of the eminent do-

main suit was made by petitioner in 1984. The present judge came on in 1985. He immediately acted to force petitioner out of the case, even telling her" you are not in this estate. "

29. She had petitioned several time for acceptance of the agreements but he refused to respond or set a hearing. She refused to turn over the records and he held her in contempt of court and fined her daily. She appealed and lost.

30. Personal representtive Smith, mandated by statute to distribute accroding to heirship settlement agreements moved to strike her petition to accept the agreement as a penalty for her refusal as personal representative to turn over the estate. The agreement determined her property rights as heir. The judge granted the motion which was appealed and upheld by the Third District Court. Petitioner also moved the judge to release the equity suit. He didn't.

31. In July 1989 Smith's petition for distribution was tried as well as petitioner's petition for return of the balance of money owed to her and her brother and other money taken from the estate of the mother which by law had to be returned to that estate. Smith, a guardian-ad-litem who had done nothing but harm to the grandson of petitioner in his conspiracy to create fees for the other attorneys, and the attorney who began the litigation for a party who already had an agreement she would receive her invalid share if there ever were funds, asked and received surcharge against petitioner for her efforts to uphold her contract and rights by law.

32. Smith asked for distribution in accordance with the invalid will, not the agreement. Fla. Stat. 733.815 prohibits it.

33. Smith received $100,000.00 for his interferences in petitioner's attempts in court actions and appeals to uphold the

agreement. The attorney who began the litigation received $25,000.00 as a surcharge against petitioner for his claim benefitting the estate by getting Judge to ignore the agreement and state law, the attorney guardian-ad-litem received his requested $10,000.00 for assisting the others.

34. Petitioner received nothing of her property rights by valid will and agreement, no compensation for her thousands of hours of work in management and property maintenance and litigation removing five invalid interests, and a claim for $5000.

35. In the disgraceful Final Judgment the Court attacks Petitioner asserting she had done no successful litigation yet he knew nothing about the case or that the estate remained open for the conclusion of the eminent domain cause, and the first two years had been the Will contest, that without her work there would have been no

sum of $400,000.00 in the estate to pay fees to all those lawyers, and there would have been five other shares which had been removed to be paid, and none of that litigation or the continuation of the eminent domain case would have been done because no one else would have invested the money or time to do it. No one would have protec the property, paid the property taxes or or federal and state income taxes where there was no assurance that there would be more than the amount offered by the condemnor of $100,000.00.

36. The Final Judgment is a self-serving dishonest representation by the trial judge of the proceedings which were extended by him and the prior judges, not by this petitioner.

37. The judges position is the same as always stated to women," if you are going to be raped, don't resist."

38. Petitioner appealed and the Third District's ruling was that the petition to

accept the agreement having previously been stricken the court did not have to distribute according to the agreement, and did not rule on the petitioner's objection to the court not having even read the invalid will to construe it as required by state law.

39. The decision of the Third District was in conflict with state decisions that the striking of a petition is not an adjudication of the merits. It is the same as a judge refusing to accept a suit for filing if it was filed with him, would not adjudicate the merits.

40. The judge who appointed Smith had by 1986 been reversed 15 of 16 times in probate for acting without jurisdiction, and in excess of jurisdiction. The present judge has been reversed many times as well, once for setting aside a trust for the two issue of a dying 86 year old man in favor of his 5th and 57 year old wife, the old man being very rich aside from the trust.

41. The Florida Supreme Court refused to accept discretionary review or appeal.

REASONS FOR GRANTING THE WRIT

Petitioner prays that this United States Supreme Court grant a Writ of Certiorari to review the judgment of the Third District Court of Appeals and the probate judge of the Eleventh Judicial Circuit of Dade County, Florida.

These decisions are a deprivation of the Constiutional rights already set forth, a deprivation of due process, and a deliberate refusal to allow access to the courts to protect rights of contract and property rights. The rulings of the court are not error, but deliberate fraud and deliberate abrogation of protective consttutional and state stautory rights, such decisions herein made in bias and to benefit persons chosen to be benefitted.

" The only redress for an infringement of the constitutional protection against the impairment of contracts is by allowing review by writ of error in the Supreme Court to judgments of state courts where this constitutional provision has not been given effect, and by conferring jurisdiction upon the circuit courts where this question is involved." Carter v. Greenbow, 114 US 317, 5 SCT 928, 29 LED 202.

" A federal court has jurisdiction regardless of citizenship of the parties of a suit to enjoin the enforcement of a judgment of a state court as having been rendered without notice or consent, in violation of due process clause of the 14th Amendment. "American Surety Co. v. Baldwin , 287 US 156, 53 S. CT 98, 77 LED 231, 86 ALR 298.

First, the Third District upheld the striking of petitioner's petition for the probate judge to accept an heirship settlement agreement which was recorded as a disclaimer and was irreviocable. It had to be accepted as of the time it was executed in 1978. It was fully performed in 1984. The petition was stricken in 1987 with no hearing, upheld by the appeal court in '88 both being a nullity since there was no trial to take evidence to set it aside for fraud.

Fla. Stat 733.815 and 732.801 (4)(b) made acceptance mandatory in 1978. Bullard v. Sharp 407 So2d 1023, 1981 cert. forcing a trial judge to accept agreement, Coppage v. State of Kansas, 236 US 1, 35 SCT 240, State v. Ives, 167 So 394. Striking petition not adjudication of merits In re Pellicer's Estate , 118 So2d 59, Fl '60. The 1978 Will was invalid. Probate Judge and the personal representative prohibited petitioner from proving the mutual will of decedent by taking control of the case, jurisdiction of which was in equity court, and remanding it from federal court when removed there for civil rights violation. This deprived petitioner of access to the courts to protect her property. Allowing that will to be proved removed Smith, Rosen, Kelner, and left only Edith and Alvin. Blacker v. Thatcher, 145 F2d 255, Florida upholds mutual wills, Weiss v. Storm,

126 So 2d 295, 1961,Fl,and when spouse admits other spouse's mutual will to probate , he binds his own.Weiss.

The trial judge censured Edith for taking appeals and filing suits to establish her property rights. This was a deprivation of rights under Amendment V.

The trial judge refused to award any fees to Edith. Under the agreement the heirs would have decided the fees and no other persons would have been involved. Of the $400,000.00 created by Edith the $100,000 to Smith, $25,000. to Rosen, to Kelner $10,000. $1,000. to expert witness, Smith $1979.43, $1000 he took earlier, several thousand to an accountant he retained would have all been in the estate, Rosen's client would have received more.

The entire process was sexual discrimination and jealousy. Edith was a cum laude law graduate, an expert administratpr having directed major federal programs in Washington, 36 year business background.

"To punish a person because he has done what the law allows him to do is a due process violation of the most basic sort and for an agent of the state to pursue a cause of action whose objective is to penalize a person's reliance on his legal rights is patently unconstitutional. Dodge v. Woolsey, 18 How 33, 15 LEd 401

and in Lehr v. Robertson, 77 LEd2d 614 463 US 248, 103 SCT 2985 " The equal protection clause is violated if a probate judge chooses a male administrator over a female administrator simply because the judge prefers males to females. The state may not subject men and women to disparate treatment when there is no substantial relation between the disparity and an important state purpose.

In his Final Judgment the trial judge refuses to accept the agreement, suborns perjury by distributing to those who swore it was not theirs, and gave Edith the right to file suits against them for tort when he was the one committing the tort, creating litigation.

CONCLUSION

PETITIONER requests that this Writ be granted to review the rulings of the trial and appeal courts below, to reverse those rulings and hold the agreement prevails, the mutual will prevails, all fee awards be stricken, and money sanctions against all parties and attorneys acting in fraud.

Edith Broida
P, O. Box 390751
Miami Beach, Fla. 33119
893-1672

CEERTIFICATE OF SERVICE

It is hereby certified this Petition wss mailed to Samuel S. Smith, 701 Brickell AVe., Miami, Fl, 33131, Milton Kelner, 44 W. Flagler St, Miami, Fla, Gene S. Rosen, 1550 N. E. Miami Gardens Drive, N. Miami Beach, Fla. 33;79, Bernard Weksler, 2655 Le Jeune Road , Coral Gables, Fla, 33134, February 10, 1992.

A P P E N D I X

SUPREME COURT OF FLORIDA

Monday, October 28, 1991

IN RE: ESTATE OF MAURICE HOROWITZ, DECEASED.

EDITH HOROWITZ BROIDA,

Petitioner/Appellant,

v.

Samuel S. Smith, et al.,

Respondents, Appellees

* CASE NO 78,925

* District Court of Appeal, 3rd District

* NO. 90-544

This case having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under ARticle V, Section 3 (b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the appeal is dismissed and the petition for review is denied. Petitioner's Motion to Strike Respondent's Samuel S. Smith's Response Brief on Jurisdiction; Petitioner's Motion to Strike Sec-

ond Certificate of Service of Samuel S. Smith and Petitioner's Motion to Strike Respondent Gene S. Rosen's Response are hereby denied.

OVERTON, ACTING C.J., MCDONALD, BARKETT, KOGAN AND HARDING, JJ. CONCUR.

Petitioner's Motion to STrike Brief is hereby denied.

A True Copy

TEST:

Sid J. White
Clerk,
Supreme Court

BH

cc: Hon. Louis J. Spallone, Clerk
Hon. Marshall Ader, Clerk
Hon. Moie J. L. Tendrich, Judge
Steven W. Huss, Esquire
Samuel S. Smith, Esquire
Milton Kelner, Esquire
Gene S. Rosen, Esquire
Edith Broida, Miami Beach
Bernard B. Weksler, ESquire

NOT FINAL UNTIL TIME
EXPIRES TO FILE REHEAR_
ING MOTION AND, IF FILED,
DISPOSED OF.

IN THE DISTRICT COURT
OF APPEAL
OF FLORIDA
THIRD DISTRICT
January Term, AD,1991

IN RE: ESTATE OF **
MAURICE HOROWITZ,
DECEASED. **
EDITH HOROWITZ BROIDA, **
Appellant, **

vs. **

Samuel S. Smith, et al., **
Appellees. **

Opinion filed March 12, 1991

An appeal from the Circuit Court for Dade County, Moie J. L. Tendrich, Judge

Edith Broida, in proper person

Ruden, Barnett, McClosky, Smith, Schuster, & Russe;; amd SAmuel Smith; Gene S. Rosen, Kelner & Kelner and Milton Kelner; Bernard B. Weksler, for appellees.

Before Hubbart, Cope and Goderich, JJ

PER CURIAM.

Edith Broida appeals a final judgment in probate. Two of the issues raised by this appeal were the subject matter of earlier

orders in probate which were appealed to, and affirmed by, this Court. Broida v. Smith, 529 So2d 700 (Fla. 3rd DCA 1988 (mem)(affirming order striking petition for approval of family settlement and petition for revocation of probate .) With regard to the other points on appeal, appellant has demonstrated no reversible error. See In Re: Estate of Lunga, 360 So2d 109. 111-12 (Fla. 3rd DCA), cert. denied,366 So2d 882, 883 (Fla. 1978); In Re: Estate of Ryecheck, 323 So2d 51,52 (Fla. 3rd DCA 1975); see also Applegate v. Barnett Bank, 377 So2d 1150 (Fla 1979). In all respects the final judgment is affirmed.

	IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
IN RE: ESTATE OF MAURICE HOROWITZ, DECEASED.	CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY PROBATE AND GUARDIANSHIP DIVISION

CASE NO. 78-1553 (02)

FINAL JUDGMENT

* * * * * * * * * *

THIS CAUSE CAME ON to be heard before me for Final Hearing on June 19, 21,22; July 17, 18, 25, 26, 27, 28; and August 2, 1989, and the Court having examined the pleadings, heard the testimony of the witnesses, examined the exhibits, hearing argument of respective counsel and is fully advised in the premises.

CASE HISTORY AND BACKGROUND

The decedent died on February 25, 1978, and his Last Will and Testament dated January 6, 1978, was offered for probate. Notwithstanding the fact that the probatable assets of the estate were

relatively small and consisted basically of a parcel of real property which was converted into cash by virtue of a condemnation proceeding brought by the City of Miami Beach, the estate is only now ready for Final Distribution and Discharge. EDITH HOROWITZ BROIDA ("Edith"), an an attorney, daughter of the decedent handled the condemnation proceedings for which she received a very substantial amount of fees and costs, to-wit: $100,000 (Fee $75,000 and costs $25,000). The condemnation case produced for the estate the sum of $400,000, its largest asset. Edith, acting on behalf of herself and her brother, ALVIN EDWARD HOROWITZ ("Alvin") as personal representatives, beneficiaries and as attorney until October of 1984; and, thereafter acting on her own as both a beneficiary

and attorney, has successfully delayed the administration of this estate for the past 11 years.

She has caused the filing of hundreds of pleadings; multiple Motions for Recusal of Judges; and made numerous attempts to remove the present Personal Representative Samuel S. Smith ("Smith"), since his appointment on June 8, 1983. In addition, she has also involved the estate in appeals brought by her to the Third District Court of Appeal, Petitions for CErtiorari to the Florida Supreme Court, suits in Federal Court and appeals therefrom, and related General Jurisdiction proceedings against the beneficiaries, their counsel and the Personal Representative. As manipulated by Edith, the death of this decedent has spawned over forty cases in the various courts, as per the schedule introduced by the Personal Representative at trial as Personal Representative's Exhibits 1 &2. All but a few of these proceedings were in-

stituted or initiated by Edith, and with the exception of an appeal in the condemnation proceedings, all of her litigation has been unsuccessful as of this date.

After 10 days of trial, the Court is now, finally making its ruling on the numerous issues that were raised by varied pleadings as objections to the Petition for Discharge filed by the Personal Representative, Smith.

The amount of litigation generated in these proceedings, prior to the "final" trial, fill 11 volumes. There have been many, many judges that have been required to hear the various and numerous motions, trials, appeals, petitions for certiorari, Federal actions and appeals, prohibitions, and finally the 10 days of trial on Peti- for Discharge. During the course of the proceedings,the Court, in 1985, found Edith in contempt of Court, subject to punishment of a fine and other sanctions,

which was affirmed by the Third District Court of Appeal.

Most of the tremendous amount of frivolous litigation was the direct result of EDith's refusal to recognize that there was a validly appointed Personal Representative, Smith. Even after many appeals and other attacks on the appointment of Smith, and the affirmance of the Appellate Courts, Edith refused to recognize what this Court held, or the Third District held, or the Supreme Court held, or the United States District Court held, or the United States 11th Circuit held. Her refusal to comply resulted in a contempt finding and other sanctions. Each ruling of every Court was attacked, appealed, and motions to recuse the various Judges were filed. The complete and total failure on her part to litigate in an orderly fashion caused the estate and the other beneficiaries to suffer greatly financially. The parties affected were her only child, her only

grandchild, her brother, and her nieces and nephew. The Judgment of this Court is an attempt to settle once and for all this estate and make final distribution:

WHEREFORE, it is

ORDERED AND ADJUDGED as follows:

1. That the MOTION TO DISMISS EDITH BROIDA's PETITION TO CONSTRUE THE WILL OF JANUARY 6, 1978, AND THE PRECEDING WILLS ON THE ISSUE OF TESTAMENTARY CAPACITY, FILED BY STACIE MERRETT AND THOMAS BLAINE MERRETT, be and the same is hereby GRANTED, and the PETITION TO CONSTRUE THE WILL OF JANUARY 6, 1978, AND THE PRECEDING WILLS ON THE ISSUE OF TESTAMENTARY CAPACITY, filed by Edith Broida, be, and the same, is hereby DISMISSED.

2. That the CLAIM AGAINST ALVIN EDWARD HOROWITZ BY PETITIONER EDITH HOROWITZ BROIDA, be, and THE SAME, IS hereby stricken.

3. That the PETITION FOR REIMBURSEMENTS FOR LOANS MADE BY EDITH BROIDA AND ALVIN EDWARD HOROWITZ TO ESTATE IS HEREBY GRANTED, to the extent that the court reporter fees were paid

in connection with the litigation against Harold Shapiro, and Samuel S. Smith, as Personal Representative, is hereby authorized to pay to the Estate of Ann HOrowitz the sum of ONE THOUSAND ($1,000.00)DOLLARS from the assets of this ESTATE.

4. That the PETITION BY ESTATE OF ANN HOROWITZ, FOR RETURN OF LOANS ADVANCED TO ESTATE OF MAURICE HOROWITZ FOR LEGAL SERVICES IN ASSISTANCE OFLITIGATION ON WILL CONTEST be, and the same is hereby GRANTED; and Samuel S. Smith, as personal representative is hereby authorized to pay to the Estate of Ann HOrowitz the sum of Eight HUndred ($800.00) Dollars.

5. That the ADDITION TO PETITION BY ESTATE OF ANN HOROWITZ FOR RETURN OF LOANS ADVANCED TO ESTATE OF MAURICE HOROWITZ FOR LEGAL SERVICES IN ASSISTANCE OF LITIGATION BE, and the same , is hereby DENIED.

6. THAT THE PETITION BY PERSONAL REPRESENTATIVE OF ESTATE OF ANN HOROWITZ FOR REIM-

BURSEMENT FOR LOANS ADVANCED TO THIS ESTATE IS HEREBY GRANTED AS TO ITEMS 1 and 2, and DENIED As to items 3, 4, and 5, and, accordingly SAMUEL S. SMITH, as PERSONAL REPRESENTATIVE IS hereby authorized to pay to the Estate of Ann HOrowitz the sum of Two Thousand Eighty and 72/100 ($2080.72) Dollars.

7. That the PETITION FOR REPAYMENT TO THE PERSONAL REPRESENTATIVE OF THE ESTATE OF ANN HOROWITZ LOAN TO ESTATE OF MAURICE HOROWITZ, TO PAY LITIGATION SETTLEMENT FOR REMOVAL OF ALL INTERESTS IN ESTATE OF MAURICE HOROWITZ OF HAROLD SHAPIRO be, and the same, is hereby GRANTED: and SAMUEL S. SMITH, as Personal Representative, is authorized to pay the Estate of Ann HOrowitz the sum of TWENTY-ONE THOUSAND ($21,000.00) DOLLARS.

8. That the PETITION FOR REPAYMENT OF COSTS ADVANCED FOR ESTATE BY EDITH BROIDA ATTORNEY-PERSONAL REPRESENTATIVE is hereby DENIED to the extent that any of these costs were expended in connection with either the eminent

proceedings, and/or the property located at 1931 Meridian Avenue. As to the costs expended in connection with the litigation against Harold Shapiro, Samuel S. Smith, as PERSONAL REPRESENTATIVE, is hereby authorized to pay the sum of ONE THOUSAND($1,000.00 Dollars to the Estate of Ann Horowitz from the assets of this estate.

9. That the PETITION FOR PAYMENT OF CLAIMS OF CLAIMS FILED IN THIS CAUSE BY EDITH BROIDA FOR REPAYMENT OF IMPROVEMENTS MADE TO THE PROPERTY AT 1931 Meridian Avenue, Miami Beach, Florida, be, and the same, is hereby DENIED.

10. That the RE-NOTICE OF CLAIM MADE AND APPLICATION FOR PAYMENTS CLAIMED BY ESTATE OF ANN HOROWITZ FOR DEBTS OWED BY MAURICE HOROWITZ, BE, AND THE SAME,IS HEREBY DENIED.

11. That the PETITION FOR INTEREST ACCRUED ON REPAYMENTS, be, and the same is hereby DENIED, and no interest shall be allowed

on any of the payments set forth above.

12. That the CLAIM BY ESTATE OF ANN HOROWITZ FOR RETURN OF ELECTIVE SHARE AND FAMILY ALLOWANCE RECEIVED BY MAURICE HOROWITZ AND NOT USED, BE, and the same is HEREBY DENIED.

13. THAT THE PETITION TO SURCHARGE MILTON KELNER, be and the same, is hereby DENIED.

14. That the PETITION BY EDITH BROIDA TO SURCHARGE KAREN HOROWITZ BARNETT, THE PETITION TO SURCHARGE BERNARD B. WEKSLER BY PETITIONER EDITH BROIDA, THE PETITION TO SURCHARGE ATTORNEY MELVIN TRUTE, THE PETITION BY EDITH BROIDA TO SURCHARGE PAULA ROTH, BETSY HOROWITZ AND STEPEHEN HOROWITZ, and the PETITION TO SURCHARGE GENE S. ROSEN IN FAVOR OF PETITIONER, EDITH BROIDA, be, and the same, are hereby DISMISSED without prejudice to any rights of said Petitioner may have to institute independent actions based on tort.

15. That the MOTION THAT COURT ACCEPT THE FAMILY SETTLEMENT AGREEMENT BETWEEN EDITH BROIDA, ALVIN EDWARD HOROWITZ AND THE FOUR ADULT ISSUE OF ALVIN WHICH IS RECORDED IN DADE COUNTY RECORDS AND IN THE COURT FILE, be, and the same, is hereby DENIED.

16. That the MOTION BY EDITH BROIDA FOR RE-STATEMENT OF TRIALS AGAINST CLAIMANTS ON PETITIONS BY MOVANT FOR SURCHARGE, be, and the same , is hereby DENIED.

17. That the MOTION BY BENEFICIARY-CREDIT-EDITH BROIDA, THAT CLAIMANT STACIE BROIDA MERRETT BE ORDERED TO APPEAR FOR TRIALS, be and the same, is hereby DENIED.

18. That the MOTION BY EDITH BROIDA PURSUANT TO LETTER TO THIS COURT THAT ALL ATTORNEY'S BE PRESENT AT THE BALANCE OF THE PRESENT TRIALS, be and the same, is hereby DENIED.

19. That the RENEWED MOTION FOR REMOVAL OF ATTORNEY BERNARD WEXLER AS ATTORNEY REPRESENTING ALVIN EDWARD HOROWITZ AND AT THE SAME

TIME REPRESENTING THE ISSUE OF ALVIN HOROWITZ IN BREACH OF THEIR AGREEMENT WITH HIM ON SETTLEMENT AND DISCLAIMER OF THEIR INTEREST, be, and the same, is hereby DENIED.

20. THAT THE MOTION BY EDITH BROIDA FOR PROTECTIVE AND RESTRAINING ORDER DIRECTED TO SAMUEL S. SMITH WHO IS THE APPOINTED PERSONAL REPRESENTATIVE OF THIS ESTATE, MILTON KELNER, WHO IS THE APPOINTED GUARDIAN AD LITEM OF THE MINOR, AND ALL OTHER ATTORNEYS, be, and the same, is hereby DENIED.

21. That the MOTION FOR SANCTIONS AGAINST SAMUEL S. SMITH, be, and the same, is hereby DENIED.

22. THAT SAMUEL S. SMITH testified that he had in excess of 500 hours involved in the administration of this ESTATE as an attorney and approximately 50 hours as a PERSONAL REPRESENTATIVE unrelated to legal services. MALLORY HORTON, ESQ., testified as an expert witness that based upon a reasonable hourly rat e of $250.00 an attorney's fee of

$125,000.00 would be an appropriate and reasonable fee for services rendered as counsel for the Personal Representative, with an additional $7500.00, as a reasonable Personal Representative's fee and accordingly the Court finds that a total reasonable fee for the services rendered by the Personal Representative and his firm through the trial of this cause is ONE HUNDRED THOUSAND ($100,000.00)DOLLARS, together with unreimbursed costs in the amount of $1,979.43, all of which are payable from the assets of this estate.

23. That pursuant to Order of this Court entered on October 1, 1985, EDITH BROIDA was required to turn over certain documents to the Personal Representative, and upon her failure to do so an Order of Contempt was entered in this cause on December 13, 1985, fining her $50.00 per day. These Orders were subsequently appealed by Edith Broida to the Third District Court of Appeal,

and the Florida Supreme Court, and affirmed. After various proceedings had transpired, including: an Order of Incarceration, dated February 11, 1987; a Writ of Bodily Attachment entered on March 5, 1987; and a Pick-Up Order, dated March 18, 1987, the records in question were finally produced by Edith Broida on March 25, 1987. This Court entered its Order on March 30, 1987, ending the contempt and fine as of March 24, 1987. Accordingly, the fine payable by EDITH BROIDA for the 466 days of her contempt totals TWENTY THREE THOUSAND THREE HUNDRED ($23,300.00) Dollars.

24. That the PETITION FOR AWARD AND ASSESSMENT OF ATTORNEYS' FEES filed by Gene S. Rosen, be, and the same, is hereby GRANTED. The Court finds that he rendered services to the estate in the amount of TWENTY-FIVE THOUSAND ($25,000.00) DOLLARS.

25. That the Motion of Guardian AD Litem

FOR EVIDENTIARY HEARING TO DETERMINE FEES AND TO SURCHARGE EDITH BROIDA INDIVIDUALLY BE AND THE SAME IS HEREBY GRANTED AND the Court award to the Guardian Ad Litem a fee of TEN THOUSAND ($10,000.00) DOLLARS.

26. That the MOTION TO DETERMINE FEE AND TO SURCHARGE EDITH BROIDA INDIVIDUALLY BY MELVIN TRUTE has been withdrawn.

27. That the MOTION BY FORMER PERSONAL REPRESENTATIVE, ALVIN HOROWITZ FOR PERSONAL REPRESENTATIVE'S FEE HAS BEEN withdrawn.

28. That although this Court finds that EDITH BROIDA rendered legal services benefitting this estate through the settlement of the litigation with HAROLD SHAPIRO during the period she served as Co-Personal Representative, she has cost the estate and its beneficiaries fees in excess of any reasonable fee she would have been entitled to, through her frivolous litigation thereafter. In addition, she provided no direct or expert testimony as to the value

of her fees and accordingly the PETITION BY EDITH BROIDA FOR ATTORNEYS FEES, be, and the same, is hereby DENIED.

29. That pursuant to Florida Statute 733.106 (4) the share of EDITH BROIDA IS surcharged for the fine of $23,300.00, and an additional $25,000.00 and the share of ALVIN HOROWITZ, DUE to his participation with Edith and consent to her actions up until the time he ceased acting as Co-Personal Representative, is surcharged in the amount of $25,000, all to be applied to the fees awarded in Paragraphs 22, 24, and 25.

30. That MALLORY HORTON, ESQ, is awarded an expert witness fee of $1,500.00 payable from the assets of this estate.

31. That EDITH BROIDA'S OBJECTION TO PERSONAL REPRESENTATIVE'S PETITION FOR DISCHARGE AS UNTIMELY AND OBJECTION TO SCHEDULE OF DISTRIBUTION, be, and the same, is hereby DENIED.

32. That under the terms of the Decedent's

Last Will and Testament, dated January 6, 1978, the remaining eight residuary beneficiaries are entitled to share equally in this Estate. Accordingly, after paying the sums set forth in Paragraphs 3, 4, 6, 7 and 8, SAMUEL S. SMITH, as Personal Representattive, is directed to divide the remaining assets into eight equal shares, and after surcharging the share of EDITH BROIDA for the fine and fees set forth above, to the extent funds in her share are available, and after surcharging the share of ALVIN HOROWITZ for the amount set forth above, he shall pay the balance of the fees and costs from the general assets of this Estate and distribute the remaining assets equally between: BETSY JO HOROWITZ, KAREN SUE HOROWITZ BARNETT, PAULA H. ROTH, STEPHEN R. HOROWITZ, THOMAS BLAINE MERRETT, and STACIE LEE MERRETT, with a reduced share to ALVIN HOROWITZ together with any

together with any remaining portion due under the share of EDITH BROIDA after the surcharge as set forth above.

33. The Personal Representative is hereby authorized to deliver the proceeds of the Financial Federal SAvings and LOan Association account passbook held by the Decedent in trust for United Order of Trusiste No 43 Variety Children's Hospital to Variety Chjildrens Hospital; said account being a Totten Trust and therefore not a probatable asset of this estate.

34. That upon the distribution set forth above, an Order of Discharge shall be entered in this cause.

DONE AND ORDERED in Chambers, at MIami, Dade County, Florida, this 8th day of DEcember, A.D., 1989.

/S/
MOIE J. L. TENDRICH
CIRCUIT JUDGE

Copies Furnished to
Samuel S.Smith, ESq.
Edith Broida, Esq.
Melvin Trute, Esq.
Bernard Wexler, ESq.
MIlton Kelner, Esq.
Gene Rosen, Esq.

Filed
'79 Jun 21

IN THE ELEVENTH JUDICIAL CIRCUIT COURT OF DADE COUNTY, FLORIDA

PROBATE DIVISION

CASE NO. 78-1553

Division 02 (Judge Blanton)

IN RE: ESTATE
MAURICE HOROWITZ
Deceased

A F F I D A V I T

State of Florida)
County of Dade)SS:

Before me, the undersigned authority, a duly authorized Notary Public of the State of Florida, personally appeared affiants, who being duly sworn upon oath, make this Affidavit: they depose and state:

That they are Edith Horowitz Broida and Alvin Edward Horowitz, respectively and are the only two children of decedent Maurice HOrowitz (Moe) and his spouse Anne Gottlieb Horowitz deceased seven months prior to decedent herein, and they are both respondent-petitioners in the within cause.

That EDith Horowitz Broida is the older of the two children, and has a long-term re-

lationship with decedent herein and his spouse as their attorney, tax-preparer, companion, and is attorney for the estate of his spouse also before this Court, and that she is the person most familiar with all the circumstances of both estates and both decedents giving her special knowledge of this cause.

That by agreement she represents all the respondent-petitioners being herself, the other adult child, and his four children who are grandchildren of decedent and his spouse, as attorney in this cause.

Said affiants for themselves and the other four respondent-petitioners claim that her representation and her testimony are essential to their cause and they would suffer a substantial hardship were she to be precluded from serving as attor-

ney and testifying as a party if and when necessary.

FURTHER affiant Saith Not.

/S/ _____ /s/ ~~Alvin Edward Horowitz~~
EDITH HOROWITZ BROIDA

I HEREBY CERTIFY that on this day, the affiants above described, executed the foregoing instrument before me, and acknowledged that they executed the same freely and voluntarily for the purpose therein expressed. Witness my hand and official seal at Miami, DAde County, Florida this 20th day of June, 1979. My Commission Expires:(stamp)

/S /
Notary Public, State of Florida

IN RE:ESTATE OF
MAURICE HOROWITZ,
Deceased.

IN THE CIRCUIT COURT
OF THE 11th JUDICIAL
CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

FILED 8/26/83

PROBATE DIVISION

Case No. 78-1553

Div: 04 Newbold

A F F I D A V I T

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:

Although there is no necessity for this Affidavit, however, in order to resolve any question, I, Stephen Ronald Horowitz, eldest issue of Alvin Edward Horowitz, thirty-nine years of age, employed as an executive with the HUghes Aircraft Company, and a resident of Los Angeles, California, do hereby

Reaffirm that Agreement dated April 3, 1978 into which I entered and which I consider binding upon me, my sisters Paula H. Roth, Karen H. BArnett, Betsy Jo Horowitz by which I and they assigned all our right, title, and interest in the Estate of our grandfather

I reaffirm the Waiver and Consent to their appointment as administrators of the Estate of whatever title and all other instruments which I signed on their behalf in this Estate.

Further, I saith not, having sworn to this affidavit before the undersigned authority.

Witnesseth: /S/ _____
Stephen Ronald Horowitz

/S/ _____ 1917 Hermosa Avenue #1AB
CA9025

/S/ _____

On August 17, 1983 before me, the under= signed, a Notary PUblic in and for the State of California personally appeared Stephen R. Horowitz known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same. Witness my hand and official seal

Official SEal /S/ _____
STamp Notary Public
Los Angeles, Cty

* * * * * * * * * * * * *

NOTE BY PETITIONER

The court file contains Affidavits by Paula Roth, BEtsy HOrowitz same date, same effect.

91-1402

Supreme Court, U.S.
FILED
MAR 30 1992
OFFICE OF THE CLERK

NO.: A-531

in the

SUPREME COURT

of the

UNITED STATES

October Term, 1991

EDITH HOROWITZ BROIDA

V.

SAMUEL S. SMITH, ET AL.,

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

SAMUEL S. SMITH
COUNSEL OF RECORD
SAMUEL S. SMITH, ET AL.,

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ATTORNEYS FOR RESPONDENTS

I. TABLE OF CONTENTS

		Page
I.	Table of Contents	i
II.	Citations of Authority	ii
III.	Statement of the Case	1
IV.	Summary of the Argument	5
V.	Argument	6
	The United States Supreme Court Lacks Jurisdiction to Decide the Questions Raised by Petitioner Because the Constitutional Claims Raised by Petitioner are Frivolous and Because Petitioner Failed to Show that the Federal Issues Raised Here Have Been Properly Pressed or Passed Upon by the State Courts Below	
VI.	Conclusion	27

II. CITATIONS OF AUTHORITY

	Page
Brown v. Massachussetts, 144 U.S. 573, 12 S.Ct. 757 (1892)	26
Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038 (1973)	20
Garner v. Louisiana 368 U.S. 157, 82 S.Ct. 248 (1961)	24
Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983)	19,20
Irvin v. Dowd, 359 U.S. 394, 79 S.Ct. 825 (1959)	25
John v. Paullin 231 U.S. 583, 34 S.Ct. 178 (1913)	25
McGolderick v. Compagnie General Transatlantique, 309 U.S. 430, 60 S.Ct. 670 (1940)	20
Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469 (1983)	21
New York v. Class, 475 U.S. 106, 106 S.Ct. 960 (1986)	20,21
Orr v. Orr, 440 U.S. 268, 99 S.Ct. 1102 (1979)	20,21
Parrot v. City of Tallahassee, Florida, 381 U.S. 129, 85 S.Ct., 1322 (1965)	20

Robb v. Conelly
111 U.S. 624, 4 S.Ct. 544 (1884) 25

Sanford v. Rubin,
237 So.2d 134 (Fla. 1970) 26

State Farm Mutual Automobile
Ins. Co. v. Duel,
324 U.S. 154, 65 S.Ct. 573, (1945) 18

Stone v. Powell
428 U.S. 465, 96 S.Ct. 3037 (1976) 24

Taylor v. Illinois
484 U.S. 400, 108 S.Ct. 646 (1988) 20

The Florida Bar v. Broida,
574 So.2d 83 (Fla. 1991) 16

Thompson v. City of Louisville
362 U.S. 199, 80 S.Ct. 624 (1960) 24

Three Affil. Tribes of
Ft. Berthold v. Wold Engine,
476 U.S. 877, 106 S.Ct. 2305 (1986) 20

U.S. Department of Mental Hygene
of Cal. v. Kirchner,
380 U.S. 194, 85 S.Ct. 871 (1965) 20,21

Vachon v. New Hampshire,
414 U.S. 478, 94 S.Ct. 664 (1974) 23

Wood v. Georgia,
450 U.S. 261, 101 S.Ct. 1097 (1981) 22,23

28 U.S.C. § 2106 23
28 U.S.C. § 1257 (amended 1988) 5,6,7
18,23,24
Sup. Ct. R. 10, 14 (1989) 5,6,7,8

III. STATEMENT OF THE CASE

This case involves a dispute arising from the administration of the estate of Maurice Horowitz who died on February 25, 1978. Petitioner, Edith Horowitz Broida is the daughter of the decedent and a beneficiary of his estate. Respondent, Samuel S. Smith is the court appointed personal representative of the estate.

The statement of the case made by Petitioner in the present Petition for Writ of Certiorari consists of an incongruous, rambling compilation of misstatements of fact and personal attacks on the judges and parties involved in this case, making it virtually impossible to address them individually. Her derogatory and insulting statements, however, cannot be completely ignored. (Petitioner's brief, p. 5, 13, 14, 17, 19, 20, 21, 23, 26, 27).

In short, Petitioner's brief portrays the entire legal system of the State of Florida (including the Federal courts located therein) as biased, corrupt and ignorant of the law. According to her, the probate, appellate and supreme court judges misapplied the laws of the state and conspired with Respondent to deprive her of her constitutionally guaranteed rights. Fortunately, however, there is no such state of anarchy in Florida. While the falsehood and inappropriateness of her alleged constitutional claims is reviewed in the Argument section of this brief, suffice it to state at this point that this fraud and conspiracy theory is wholly illusory.

In a Final Judgment dated December 8, 1989, the probate court accurately describes the path of litigation leading up to that judgment; a path needlessly

twisted and made difficult by the immense frivolous litigation generated by Petitioner for eleven years. (Petitioner's brief, p. A5 - A10). Nevertheless, the Final Judgment was entered, the estate assets were distributed and a subsequent discharge of the matter was ordered. (Petitioner's brief, p. A10 - A22).

In the December 8, 1989 Final Judgment, the probate court rendered judgment on approximately twenty-five (25) pending motions and petitions, thus determining the amount to be distributed to each party, including Petitioner. Unhappy with that judgment, Petitioner appealed to the Third District Court of Appeal. That court affirmed citing res judicata and lack of reversible error as grounds for its decision. (Petitioner's brief, p. A3, A4). Dissatisfied once again, Petitioner appealed to the

Supreme Court of Florida, which, in exercising its discretion, declined to accept jurisdiction, thereby dismissing the appeal and denying her petition for review. (Petitioner's brief, p. A1, A2).

IV. SUMMARY OF THE ARGUMENT

28 U.S.C. § 1257(a) (amended 1988) empowers this Court to review state court judgments provided that the Federal issue being raised was pressed or passed upon by the state court below. Sup. Ct. R. 10(c) (1989) allows for certiorari review by this Court provided that the state court has decided an important question of Federal law. In the present case, Petitioner fails to show that the Federal issues raised here by Petitioner were properly pressed or passed upon by the state courts below.

Furthermore, Petitioner's petition constitutes an attempt to have this Court re-decide the distribution of estate assets simply because she is dissatisfied with the results obtained after twelve years of state court litigation.

VI. ARGUMENT

THE UNITED STATES SUPREME COURT LACKS JURISDICTION TO DECIDE THE QUESTIONS RAISED BY PETITIONER BECAUSE THE CONSTITUTIONAL CLAIMS RAISED BY PETITIONER ARE FRIVOLOUS AND BECAUSE PETITIONER FAILED TO SHOW THAT THE FEDERAL ISSUES RAISED HERE HAVE BEEN PROPERLY PRESSED OR PASSED UPON BY THE STATE COURTS BELOW.

Petitioner directs her petition for a Writ of Certiorari to the Third District Court of Appeal's decision affirming the Final Judgment of the Probate Court (Petitioner's brief, p.1). However, Petitioner invokes this Court's jurisdiction citing 28 U.S.C. § 1257(3) and Sup. Ct. R. 17(b) and (c). (Petitioners brief, p.1). In responding, Respondent can only assume that Petitioner is referring to 28 U.S.C. § 1257(a) (amended 1988), and to Sup. Ct. R. 10 (1989), which replaced previous Rule 17.

These provisions provide this Court

with the power to review

> . . . [F]inal judgments or decrees rendered by the highest court of a State in which a decision could be had . . . where any title, right, privilege, or immunity is specially set up or claimed under the Constitution . . . or statutes of . . . the United States. 28 U.S.C. § 1257(a) (amended 1988).

Certiorari review, however, is a matter of judicial discretion. Thus, in considering a petition arising from a state court judgment, Certiorari may be granted

> [W]hen a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeal., Sup. Ct. R. 10(b) (1989),
>
> or
>
> [W]hen a state court . . . has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.", Sup. Ct. R. 10(c) (1989).

According to the statute and rules cited above, in order for this Court to have the power to grant certiorari review to a judgment made by a state court, three conditions must be met. First, the judgment must be final. Second, it must be rendered by the highest court of a state in which the decision could be had. Third, the judgment must involve an important Federal question decided by the state court. In this case, the first two conditions have been met but the third has not. This case involved the distribution of assets of an estate and not a Federal, much less a Constitutional, issue.

Sup. Ct. R. 14 (1989) places the burden of establishing the jurisdiction of this Court to review the question(s) presented on Petitioner. An analysis of how this burden was treated by Petitioner

here shows that jurisdiction of this Court has not been established and that Petitioner is attempting to turn this Court into a court of review for every state court judgment, disregarding procedural and subject matter limitations placed on this Court by the Congress.

In her jurisdictional statement, Petitioner states:

> [T]he judgment of the trial court and opinion of the appeal court plus the refusal of the Supreme Court of Florida to accept review are deprivations of petitioner's Federal Constitutional rights as guaranteed by the Fifth Amendment and the Fourteenth Amendment, Title 42, USC, Sec 1983, the Thirteenth Amendment, the Florida Constitution, Art. 1, Sec. 2, 9, 10, Probate Statutes and case law of the State of Florida in conflict with the decision of the Third District Court of Appeals [sic] of Florida and the judgment of the Florida trial probate judge. (Petitioner's brief, p. 1, 2).

Later, in her Statement of the Case, Petitioner, albeit in a very disorganized

and uncoordinated fashion, points to the acts allegedly giving rise to her constitutional claims.

Her Fourteenth Amendment claim would seem to be: the distribution of Estate assets pursuant to the Will rather than to an agreement among family members, which resulted in her receiving a smaller share of the Estate, constitutes an unconstitutional deprivation of property. (Petitioner's brief, p. 3, 20). With all due respect, nothing could be further from the truth. Petitioner was given numerous opportunities to litigate her claims. Her appeals were also heard and denied. Her attempts to remove judges were heard and denied. Her attempts to remove the cases to the Federal courts, and her subsequent efforts to remove Federal judges were heard and denied.

Thus, the dismissal of such challenges, on the Final Judgment, reflects the fact that this issue had been previously addressed by the courts on multiple occasions. Likewise, on appeal, the Third District Court of Appeal cited res judicata as grounds for its decision affirming the Probate court's dismissal. (Petitioner's brief, p. A3, A4).

In light of this course of litigation, the only plausible conclusion is that Petitioner is here trying to revive her challenge to the Will, cloaking her appeal this time under a constitutional guise. Petitioner does not challenge the constitutionality of any state statute. She claims that her injuries stem from decisions constituting ". . . deliberate fraud and deliberate abrogation of protective constitutional and state statutory rights, such decisions

herein made in bias and to benefit persons chosen to be benefited." (Petitioner's brief, p. 23).

While the probate court's decision, just as virtually every decision made by any court, deprives the losing party of property, no one can seriously maintain that due process was not afforded Petitioner. Quite the contrary is true. If anything, this case serves as an example of how a party may abuse the process in order to get what she wants.

Under these circumstances, review by this Court would amount to nothing short of a de novo review of an estate distribution proceedings which were carried out under statutes not being challenged here, and under proper due process. This should not be allowed. Respondent respectfully requests that this Court put an end to this wasteful

and meritless cause.

Petitioner's Fifth Amendment challenge alleges that "The Trial judge censured [Petitioner] for taking appeals and filing suits to establish her property rights." (Petitioner's brief, p. 26). Petitioner does not explain this charge in any detail because it is frivolous. As the probate judge stated, Petitioner has ". . . caused the filing of hundreds of pleadings . . . spawned over forty cases in the various courts . . .", (Petitioner's brief, p. A7), filling a total of eleven volumes.

Thus, Petitioner has far from been deprived of the opportunity to present and litigate her claims. The fact that after eleven years of manipulating and abusing the system she finally lost cannot be considered censorship. Petitioner fails to acknowledge reality;

losing is not pleasant, but it does not mean that the other side, or for that matter, the judges cheated.

Petitioner's Thirteenth Amendment claim is equally meritless. She claims that she was denied of ". . . compensation for eight years of professional work performed as attorney and other professional without grounds . . .". (Petitioner's brief, p. 3). Again, Petitioner ignores the findings of the court and replaces reality with her own self-serving, distorted account of the facts. The truth is that Petitioner was awarded her share of the Estate, reduced by the fines assessed to her as a consequence of her contempt. Furthermore, the probate court stated:

> That although this Court finds that [Petitioner] rendered legal services benefitting this estate through the settlement of the litigation . . . she has

> cost the estate and its beneficiaries fees in excess of any reasonable fee she would have been entitled, through her frivolous litigation thereafter. (Petitioner's brief, p. A19).

This statement alone negates her claim that she was denied of compensation for her work without any grounds. The grounds were plainly stated. The probate court considered her actions to be frivolous, rather than professional. Therefore, once again, Petitioner's real challenge is directed at the reasons underlying the court's determination with respect to her fees: she considers that her services should be recognized because she was right. The probate court, however, explicitly disagreed with her. The appellate court affirmed and the supreme court declined to review the matter.

Parenthetically, Petitioner's actions in this case are not an aberration in an

otherwise unblemished record of professionalism. This Court must be made aware that the pursuit of frivolous claims and personal attacks on lawyers and judges caused her to be suspended from the practice of law by the Supreme Court of Florida in 1991. The Florida Bar v. Broida, 574 So.2d 83 (Fla. 1991).

Petitioner's remaining charges merit only brief comment. Her charges of gender discrimination by the entire judiciary are unfounded. (Petitioner's brief, p. 26). Not surprisingly, she claims that judges, in rendering judgments against her, acted discriminatorily because she is a woman. Again, according to her, the unfavorable result had to have been based on discrimination. It seems Petitioner has considered every imaginable illegal reason for the result, but has not considered that

maybe, just maybe, she was wrong.

Finally, her scandalous accusations of rape, (Petitioner's brief, p. 21) and her comparison of the judicial system of Florida to that of Nazi Germany (Petitioner's brief, p. 5) deserve no comment.

In summary, this Court must recognize Petitioner's misconception of the proper function of our judicial system. This Court's function is not to review judgments of state courts based on naked assertions of inequity; the Bill of Rights does not guarantee people will get what <u>they</u> believe they deserve, much less what <u>they</u> want. The State of Florida determined her rights after proceedings replete with due process, and now Petitioner is unhappy with the result. This alone does not entitle her to review in this Court.

Aside from the grounds mentioned so

far, a purely procedural analysis of Petitioner's Petition reveals a further jurisdictional defect, namely, that since Petitioner fails to show that the constitutional issues raised by Petitioner here were properly raised by her at the probate court or on appeal to the Third District Court of Appeal, U.S.C. § 1257 forbids this Court from reviewing them now.

The judicial interpretation of the jurisdictional limitations placed by Congress on this Court has evolved into the "not pressed or passed upon" in state court rule. This rule was affirmed in State Farm Mutual Automobile Ins. Co. v. Duel, 324 U.S. 154, 160, 65 S.Ct. 573, 576 (1945). In that case the court stated that ". . . [s]ince the [state] Supreme Court did not pass on the question, we may not do so.".

Recently, in Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983), this Court reaffirmed the rule. There, the Court refrained from reviewing a petition to modify the exclusionary rule deeming that this issue had not been sufficiently raised in the state proceedings below. The Court reviewed the two principles behind the "not pressed or passed upon" below rule. First, it is very likely that the record will be inadequate since it was not compiled with the Federal issues in mind. This principle is very applicable to this case because in her present Petition, Petitioner fails to direct this Court's attention to any point in the record where her Federal claims were properly raised.

The second principle behind the "not pressed or passed upon" below rule, is ". . . due regard for the appropriate

relationship of this court to state courts . . .", McGolderick v. Compagnie Generale Transatlantique, 309 U.S. 430, 434-435, 60 S.Ct. 670, 672-673 (1940). This relationship " . . . demands that [state] courts be given an opportunity to consider the constitutionality of the actions of state officials, and, equally important, proposed changes in existing remedies for unconstitutional actions." Illinois, 103 S.Ct. at 2323. Likewise, here, Petitioner's Petition fails to point out how the Florida probate court, or the Third District Court of Appeal were afforded this opportunity.[1/]

[1/] Neither does this case call for an exception to the rule. See, Three Affil Tribes of Ft. Berthold v. Wold Engine, 476 U.S. 877, 106 S.Ct. 2305 (1986); Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038 (1973); Taylor v. Illinois, 484 U.S. 400, 108 S.Ct. 646 (1988); New York v. Class, 475 U.S. 106, 106 S.Ct. 960 (1986); U.S. Department of Mental Hygene of Cal. v. Kirchner, 380 U.S. 194, 85 S.Ct. 871 (1965); Orr v. Orr, 440 U.S. 268, 99 S.Ct. 1102 (1979); Parrot v. City of

(Footnote continued on next page.)

In summary, this Court should deny Petitioner's Petition for a Writ of Certiorari because she has not shown that the Federal issues raised by Petitioner here were properly pressed or passed upon by any of the state courts below, and also because the state court

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(Footnote continued from previous page.)
Tallahassee, Florida, 381 U.S. 129, 85 S.Ct. 1322 (1965). In all these cases, there were special circumstances which made an exception necessary. Here Petitioner does not call for an exception, nor do the present circumstances make one necessary. The New York, Mental Hygene and Orr cases relate to what is known as the "plain statement" rule, as formulated in Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469 (1983) which states that unless the state court clearly indicates that it is deciding the case based on state grounds, the U.S. Supreme Court has jurisdiction. The reasoning behind the "plain statement" rule, however is only applicable where there is doubt as to the grounds for the state court's decision. In this case the state court decided the case without any remote reference to any federal grounds. The court of appeal affirmed based on res judicata and lack of reversible error, and the Florida Supreme Court exercised its discretion and declined to hear the appeal.

decision from which Petitioner appeals was reached based on purely state law grounds.

The cases cited by Petitioner in support for this Court's jurisdiction fail to properly address the limitation of this Court's jurisdiction in light of the "not pressed or passed upon" below rule. (Petitioner's brief, p.6, 7.)

In Wood v. Georgia, 450 U.S. 261, 101 S.Ct. 1097 (1981), this Court granted certiorari to review a state court decision based on a conflict of interest question giving rise to a due process challenge, even though the Federal question was not raised during the state court's proceedings. Nevertheless, the facts and circumstances of that case are clearly distinguishable from the present case. In Wood, the principal fact supporting the exercise

of this Court's certiorari jurisdiction was that petitioner's attorney there was the one charged with the conflict of interest. Wood, 101 S.Ct. at 1100. Accordingly, it was unlikely that the attorney himself would raise the conflict of interest issue. Furthermore, evidence in the record showed that the conflict of interest issue had been raised at trial. Id., 101 S.Ct. at 1100.[2/]

In the present case there was nothing preventing Petitioner from properly raising any of her Federal

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2/ Moreover, neither that case's reliance on 28 U.S.C. § 2106, nor Vachon v. New Hampshire, 414 U.S. 478, 94 S.Ct. 664 (1974) (cited in support of Wood) reflect the adherence to the 28 U.S.C. § 1257 jurisdictional limitations followed today. As Justice Rehnquist stated in his dissent in Vachon, other provisions do not ". . . give this Court the power to simply ignore the limitations placed by 28 U.S.C. § 1257 . . ." Vachon, 94 S.Ct. at 667.

claims during the state court proceedings. Furthermore, again, Petitioner fails to direct this Court's attention to any point in the record where her Federal claims were properly raised.

The next six cases cited by Petitioner in support of this Court's certiorari jurisdiction not only fail to support Petitioner's argument, they defeat it. All six cases explicitly adhere to the principles of the "not pressed or passed upon" below rule. See Thompson v. City of Louisville, 362 U.S. 199, 80 S.Ct. 624 (1960) (14th Amendment due process challenge was raised at trial); Garner v. Louisiana, 368 U.S. 157, 82 S.Ct. 248 (1961) (Federal questions were properly raised and preserved throughout the proceedings); Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037 (1976) (where the state has

provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted Federal habeas corpus relief on Fourth Amendment grounds); John v. Paullin, 231 U.S. 583, 34 S.Ct. 178 (1913) (appeal dismissed for want of jurisdiction; no Federal questions were raised and there was no state proceeding ruling on Federal questions); Robb v. Conelly, 111 U.S. 624, 4 S.Ct. 544 (1883) (privileges and immunities claim was raised in state proceedings); Irvin v. Dowd, 359 U.S. 394, 79 S.Ct. 825 (1959) (constitutionally based objections were pursued throughout state proceedings).

Finally, Petitioner's statement that the Federal issues were raised below in her Notice of Appeal to the Florida Supreme Court (Petitioner's brief, p.2) is insufficient to establish this Court's

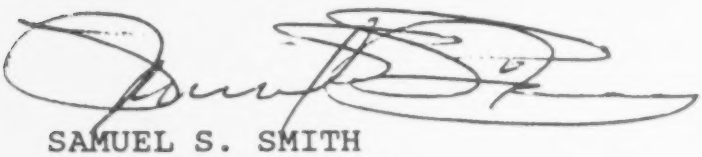
jurisdiction. The Federal issues had to have been properly raised at the probate or appellate courts. Sanford v. Rubin, 237 So.2d 134 (Fla. 1970), Brown v. Massachussetts, 144 U.S. 573, 12 S.Ct. 757 (1892).

In conclusion, since Petitioner has not shown that the Federal issues raised here were properly pressed or passed upon by the state courts below, and since the facts of this case do not present any circumstances which may give rise to exceptions to this Court's jurisdictional limitations, Petitioner's Petition for a Writ of Certiorari must be denied. This petition consists of than a repetition of issues that were decided, appealed and affirmed by the state courts. Petitioner is unhappy with the estate distribution, and incorrectly sees this court's function as a new forum for her contentions.

VII. CONCLUSION

For all the reasons mentioned above, Respondent respectfully requests that this Court deny Petitioner's Petition for a Writ of Certiorari.

Respectfully submitted,



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